

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., MOTOROLA MOBILITY
LLC, and GENERAL INSTRUMENT
CORPORATION.,

Defendants.

CASE NO. C10-1823-JLR

DECLARATION OF BRIAN BLASIOUS
IN SUPPORT OF DEFENDANTS'
MOTION TO SEAL DOCUMENTS AND
TRIAL TESTIMONY AND EXCLUDE
UNAUTHORIZED PERSONS FROM
THE COURTROOM DURING
TESTIMONY REGARDING TRADE
SECRETS

**NOTED ON MOTION CALENDAR:
Friday, November 9, 2012**

DECLARATION OF BRIAN BLASIOUS IN SUPPORT OF
DEFENDANTS' MOTION TO SEAL DOCUMENTS AND
TRIAL TESTIMONY
CASE NO. C10-1823-JLR

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1 I, Brian C. Blasius, declare as follows:

2 1. I am currently Patent Licensing Manager at Google Inc. Until September of 2012,
3 I was Director, Intellectual Property Licensing, at Motorola Mobility LLC, formerly known as
4 Motorola Mobility, Inc. Prior to the January 4, 2011 separation of Motorola Mobility, Inc. from
5 Motorola, Inc., I held the same role in the Mobile Devices and Home business segments of
6 Motorola, Inc. ("Motorola").

7 2. I submit this declaration in support of Defendants' Motion to Seal Documents and
8 Trial Testimony and Exclude Unauthorized Persons from the Courtroom during Testimony
9 Regarding Trade Secrets, submitted concurrently herewith. I have personal knowledge of the facts
10 set forth in this Declaration and, if called as a witness, could and would competently testify to
11 them.

12 3. As Director, Intellectual Property Licensing for Motorola, my primary
13 responsibilities included negotiating Motorola's patent licenses. I have been involved in the
14 negotiation of numerous patent license agreements on behalf of Motorola and am currently
15 involved in active licensing negotiations with Motorola's competitors on Motorola's behalf. I am
16 thus intimately familiar with Motorola's patent licensing history, Motorola's intellectual property
17 licenses and Motorola's licensing practices, including those concerning confidentiality, as well as
18 the tactics and positions that Motorola has seen in its licensing negotiations. I am also familiar
19 with the types of information contained in patent licenses (including in Motorola's patent
20 licenses), and with how that information could be used by competitors and prospective negotiation
21 counterparties if disclosed publically.

22 4. I understand that the Court has scheduled a trial in this matter, beginning on
23 November 13, 2012, and that the Court intends to consider at least the RAND rate for a license
24 between Microsoft and Motorola for Motorola's standard essential patents for the 802.11 and
25 H.264 standards.
26

Motorola's Licenses and Licensing Negotiations

5. I understand that there is a high likelihood that at this trial the parties will seek to introduce into evidence numerous licenses between the parties and various third parties, or between third parties and patent pools, and will seek testimony from both fact and expert witnesses about various licensing terms in those agreements. I understand that the proposed list of exhibits submitted by the parties includes dozens of Motorola licenses with non-parties to this litigation, as well as licenses between third parties and patent pools. I am familiar with the patent licenses on the exhibit list between Motorola and non-parties to this litigation, which are summarized in Exhibit 3334. While I am not personally familiar with the specific licenses entered into between third parties and patent pools that are at issue in this case, I am familiar with the general terms and conditions in those agreements.

6. I understand that there is also a high likelihood that the parties will seek to introduce evidence regarding highly confidential licensing negotiations between Motorola and prospective licensees, including those with which Motorola ultimately reached licensing agreements. I am familiar with Motorola's negotiations with prospective licensees, and in particular with the materials used in negotiations with Option NV, HTC, Apple, and Samsung, which are included on the list of proposed exhibits as Exhibits 9 and 3162-3164.

7. The terms of Motorola's patent licenses are not known to the public.

8. Even within Motorola, access to confidential information regarding licensing terms and conditions is restricted. The employees in Motorola's licensing department understand the extremely sensitive nature of such information, and understand their duty to not disclose the terms of these agreements. These agreements are rarely, if ever, shared outside the legal and licensing departments.

9. Public disclosure of the terms of Motorola's licenses, settlements, and acquisitions would cause significant harm to Motorola by negatively affecting Motorola's future licenses, settlements, and acquisitions. Competitors and potential counterparties to licensing, settlement and

1 acquisition agreements would gain an unfair insight into Motorola's business strategies, licensing
2 strategies, prior royalty grants, negotiation tactics, and cost/benefit analyses. Using their
3 knowledge of the precise substantive and financial terms of previously nonpublic agreements, they
4 would be able to calibrate their negotiation strategies with Motorola, thus creating a negotiating
5 imbalance and unfair advantage.

6 10. Similarly, public disclosure of the confidential negotiations between Motorola and
7 prospective licensees would similarly cause significant harm to Motorola by negatively affecting
8 Motorola's future licenses, settlements, and acquisitions. Competitors and potential counterparties
9 to licensing, settlement and acquisition agreements would gain an unfair insight into Motorola's
10 business strategies, licensing strategies, negotiation tactics, and cost/benefit analyses. Using their
11 knowledge of Motorola's negotiating points, they would be able to calibrate their negotiation
12 strategies with Motorola, thus creating a negotiating imbalance and unfair advantage.

13 11. For the same reasons, public disclosure of Exhibit 9, a letter from Motorola to
14 Option NV, and Exhibits 3162-3164, the presentations used during negotiations with HTC, Apple,
15 and Samsung, would similarly cause significant harm to those third parties.

16 12. Motorola regards the terms of agreements with other licensing parties as highly
17 sensitive, confidential information. One reason for this, among other reasons, is that those terms
18 reflect Motorola's valuation of other parties' intellectual property or Motorola's valuation of
19 particular license terms. If Motorola did not maintain that confidentiality, negotiating parties
20 would attempt to utilize this information to increase their leverage in future negotiations or stall or
21 sidetrack such negotiations. The portfolios held by previously licensed parties and the terms that
22 those previously-licensed parties received, are negotiated under different market conditions.
23 Indeed, to my knowledge, Motorola is engaged in ongoing licensing negotiations with several
24 competitor companies, and the public disclosure of information in Motorola's licensing
25 agreements would be harmful to Motorola's licensing program. Indeed, should third parties have
26

1 access to this information without Motorola having similar access, an asymmetry of information
2 would exist and negotiations would be unbalanced.

3 13. Motorola's licensing agreements are also generally the subject of nondisclosure
4 agreements and are highly confidential to the third parties that signed those agreements with
5 Motorola. Those third parties would likely consider public disclosure of information about these
6 license agreements to be extremely harmful to them.

7 14. The need for confidentiality extends to the summary of Motorola's licenses,
8 Exhibit 3334. Public disclosure of this summary information would have the same detrimental
9 effect on Motorola as would have the distribution of the underlying data.

10 **Third Party Licenses with Patent Pools**

11 15. While I am not personally familiar with the terms of the licenses on the proposed
12 exhibit list between third parties and patent pools, I understand that those licenses have been
13 produced in this case subject to high confidentiality, and that, like the terms of Motorola's
14 licenses, the terms of those licenses are highly confidential.

15 16. For the same reasons that public disclosure of the terms of Motorola's licenses,
16 settlements, and acquisitions would cause significant harm to Motorola by negatively affecting
17 Motorola's future licenses, settlements, and acquisitions, public disclosure of the terms of these
18 third party licenses with patent pools may cause significant harm to the third parties.

19 **Past and Projected Sales and Revenue Data**

20 17. I understand that there is also a high likelihood that at this trial the parties will seek
21 to introduce evidence regarding both highly confidential past sales and revenue data and highly
22 confidential future sales and revenue projections for Motorola and Microsoft products.

23 18. Disclosure of this evidence, and in particular disclosure of the parties' sales and
24 revenue projections, would have the potential to lead to competitive harm by creating an
25 asymmetry of information between the parties and competitors, whose sales and revenue results
26 and projections are not public.

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 29th day of October, 2012.

/s/ Marcia A. Ripley

Marcia A. Ripley